

# JOURNAL OF THE SENATE

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Friday, August 2, 1957

The Senate, sitting as a court for the trial of Article of Impeachment against the Honorable George E. Holt, Circuit Judge for the Eleventh Judicial Circuit of Florida, convened at 9:30 o'clock A. M., in accordance with the rule.

The Chief Justice presiding.

The Managers on the part of the House of Representatives, Honorable Thomas D. Beasley and Honorable Andrew J. Muselman, Jr., and their attorneys, Honorable William D. Hopkins and Honorable Paul Johnson, appeared in the seats provided for them.

The respondent, the Honorable George E. Holt, with his counsel, Honorable Richard H. Hunt, Honorable William C. Pierce and Honorable Glenn E. Summers, appeared in the seats provided for them.

By direction of the Presiding Officer, the Secretary of the Senate called the roll and the following Senators answered to their names:

Adams	Carlton	Getzen	Morgan
Barber	Carraway	Hair	Neblett
Beall	Clarke	Hodges	Pearce
Belser	Connor	Houghton	Pope
Bishop	Davis	Johns	Rawls
Boyd	Dickinson	Johnson	Shands
Brackin	Eaton	Kelly	Stenstrom
Branch	Edwards	Kickliter	Stratton
Cabot	Gautier	Knight	

—35.

A quorum present.

CHIEF JUSTICE TERRELL: Senator Knight, will you pray?

SENATOR KNIGHT: May we pray.

Almighty God, hear our prayer. Because of our sins and transgressions, we feel so insignificant when we pray, and yet we feel our need for divine guidance in our every walk of life.

We do not need the strength of Samson, the wisdom of Solomon, the patience of Job, the loyalty of David or the faith of Abraham to be called one of Thy Children. In our present responsibility we are conscious of our inability to face the task and of our own weaknesses.

We therefore pray for Thy power to direct us in doing that which will reflect honor to Thy Holy Name.

For Jesus Christ, our Savior and Redeemer, Amen.

CHIEF JUSTICE TERRELL: The Sergeant-at-Arms will make proclamation.

THE SERGEANT-AT-ARMS: Hear ye! Hear ye! Hear ye!

All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the State of Florida is sitting for the trial of Article of Impeachment exhibited by the House of Representatives against the Honorable George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of Florida.

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Thursday, August 1, 1957, was dispensed with.

The Senate daily Journal of Thursday, August 1, 1957, was corrected and as corrected was approved.

CHIEF JUSTICE TERRELL: Counsel may proceed.

MR. SUMMERS: Please call Mr. George Clark.

Thereupon,

GEORGE T. CLARK,

a witness called and duly sworn in behalf of the Respondent, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. SUMMERS:

Q Will you please state your name to the Senate, sir?

A George T. Clark.

Q Mr. Clark, what is your occupation?

A I am an attorney at law.

Q Where do you reside?

A Miami, Florida.

Q Mr. Clark, how long have you been engaged in the practice of law in Miami?

A 32 years.

Q Will you please tell the Senate when and from what institution you received your legal training?

A I was graduated from Washington and Lee University in June, 1925, in law.

Q How long have you been in the practice in Dade County?

A I came to Dade County in July, 1925, took the October examination, and was admitted in December, 1925.

Q In other words, for approximately - -

A Over 30 years.

Q Will you state to the Senate the general nature of your practice?

A Well, it has been a rather general civil practice. I have not handled any criminal law, I haven't handled any negligence cases, but, pretty general, in other civil matters I have had some experience. For the last 10 years my practice has been devoted more to real estate and probate work than anything else.

Q Mr. Clark, what, if any, positions have you held in the Dade County Bar Association?

A I served either three or four times as a director of the Dade County Bar Association; I served as treasurer of the Dade County Bar Association for three or four, maybe five, years. I am not sure. It was back in the Thirties.

Q Have you been on any committees of The Florida Bar since it was organized as such?

A I served on the Grievance Committee of The Florida Bar for at least three years, and for the past three years I have been vice-chairman of the Ethics Committee of the Bar of Florida.

Q Mr. Clark, from your experience as a lawyer in Dade County, in the Eleventh Judicial Circuit, are you familiar with curatorships and the fees customarily charged in that type of case?

A I believe that I am.

Q I will ask you, Mr. Clark, if you have examined the file in the matter of the curatorship of Jewell Alvin Dowling, an incompetent?

A I examined a copy of it some time ago. The original was not available to me until yesterday, but I spent considerable time yesterday checking the original and verifying the fact that the copy that I had examined was correct.

Q Did you examine the file in that particular case for the purpose of determining the fees that were charged?

A I didn't understand your question.

Q Did you examine the file in the matter of the curatorship of Jewell Alvin Dowling for the purpose of determining the fees that were charged, that were paid to the curators in that case?

A Yes, sir, I did.

Q From your study of that file and the fees paid in that case, did you form an opinion as to the reasonableness or unreasonableness of the fees charged therein?

A I did.

Q Would you state to the Senate what that opinion is and upon what it is based?

A It is my conclusion that the fees that were allowed and paid to the curators were reasonable, considering the over-all picture, that is, that there were two curatorships involved, there were two curators.

A curatorship is a very vexatious type of matter to handle. The type of people that you deal with, because of their incompetency, make it very time-consuming and make it hard to handle.

I considered the time that they devoted to it, the results accomplished, and all of the factors that you generally consider in determining fees for attorneys and personal representatives of various kinds - - and I think a curator is a personal representative.

I considered the fact that they did all the legal work themselves and did not require the expense of additional attorney or attorneys.

I considered the fact that in making the sale of the 99-year lease and in making the 99-year lease they did all the negotiating themselves, that they did not require the intervention of a real estate broker.

I considered the fact that they handled the matter very meticulously. It seemed to me that there was an obvious effort on their part to follow the statute very closely. They took sealed bids on these 99-year leases, and they had appraisals made. It seemed to me that they made a very conscious and conscientious effort to handle the matter in the proper way.

Q And is it your opinion that the fees that were allowed in that case were reasonable?

A It certainly is.

Q One further question, Mr. Clark: from your experience as a practitioner in Dade County would you tell the Senate what the practice or custom is in the Eleventh Judicial Circuit in regard to supporting an application for the allowance of fees with some evidence, whether it be affidavits or otherwise?

A Sometimes the Judges require it and sometimes they do not. Generally, if there is a contest as to the amount of the fee the lawyers think it is incumbent upon them to either have some affidavits or to have some attorneys to testify, but if there is no actual contest, no one there representing another party saying that the fee should be lower, then the one asked by the attorneys or the personal representatives is usually allowed. It is very often fixed and allowed by the Court from his knowledge of the case, knowledge of the fees that are allowed generally in Dade County, and his estimate of what the value of the services of the attorney are, or the services of the personal representatives.

MR. SUMMERS: You may inquire.

#### CROSS EXAMINATION

BY MR. MUSSELMAN:

Q Mr. Clark, bearing on the question of any possible interest or bias on your part in behalf of Judge Holt, how long have you known Judge Holt?

A Judge Holt and I started practicing law right across the hall from each other in the First National Bank Building in Miami, in 1925. I have known him very well ever since.

Q Did you have any type of partnership agreement with him or office arrangement or expense-sharing arrangement with him when you first commenced to practice?

A No sir. He was employed by one firm and I was employed by another.

Q Have you been close personal friends since the time you first met him as young attorneys, starting to practice?

A Yes sir.

Q Have you visited him frequently on social occasions and others?

A Well, I will say since the beginning of the War I have not seen as much of Judge Holt as I did prior to that time. Prior to that time I visited in his home quite often. I have been there since the war but not nearly so frequently.

Q How much time, altogether, do you think, Mr. Clark, you have had to devote to examining the Dowling file?

A Well, that would be rather difficult to estimate. At the time of my first examination I think I spent two evenings on it, of four or five hours. I spent another evening on it last year. Since I have been up here I have spent two or three hours on it, and I have reviewed my own notes on it.

Q I take it, then, that you are rather familiar with the file, having gone over it as much as you say you did.

A I am reasonably familiar with it.

Q What value did you place then, Mr. Clark, on the total amount of the estate of the Dowlings in Florida?

A Well, in the original petition for the appointment of a curator it was estimated at four hundred and some-odd thousand dollars - - four hundred and forty, I believe.

Q Was there a subsequent audit report filed by Wasserman for the receivers, evidencing any different figure?

A There was a subsequent report by Wasserman. I don't recall what figure he gave.

Q Now, Mr. Clark, I think your testimony has more or less been limited to what the curators received. What did they receive? Do you recall that?

A I believe the total was \$32,000 - - a little over \$32,000.

Q Is that for both of them?

A That was for each of them.

Q Did Mr. Heller receive anything other than the fee which you have just enumerated?

A I believe he received a fee of \$2500 as guardian ad litem prior to the time of his appointment as curator.

Q If I told you, sir, that that fee was \$3,000 would I be incorrect?

A That is not my recollection, but I am speaking from recollection. I don't have the file before me.

Q The file, I believe, sir, is on the desk next to you. Will you please check that for me?

(The witness examined a file or files located on a small table close to the witness stand.)

Q I believe it is contained in the order of October 21, 1954. It is entry number 208, I believe, sir.

A That is correct - - \$3,000.

Q Mr. Clark, what did the receiver do? Did you have a chance to examine the file and tell what the receiver did to earn a fee?

A Well, I didn't examine the file with that in view. I inspected the papers that mentioned the receiver and his services, but I was examining it particularly with reference to the fees of the curators.

Q Can you tell us from the order of October 21, which is Entry 208, what the receiver did receive as his fee?

A \$6,500.

Q What did the receiver's attorney receive as his fee?

A \$2,500.

Q And what did the receiver's accountant receive as his fee?

A \$1,000, to Sidney Wasserman.

Q What is the total amount of that, sir?

A You mean the receiver, his attorney, and Wasserman?

Q That is correct?

A \$10,000.

Q Did you, in examining the file, determine what amounts of money the receiver has handled in the way of collection of rents and how much he turned over to the curators?

A No sir, I did not.

Q Mr. Clark, in determining what the curators of an estate shall receive, is the schedule of minimum fees used as a standard by which to determine that, for attorneys?

A It is of some value, but I don't think that this is the type of case that the minimum fee should be considered.

Q Well, is it used somewhat as a standard, as a guide - - the fees for attorneys - - in determining what a curator receives?

A Merely as a starting point.

Q Did you examine the file to determine what the curators did for receipt of the fee on March 9, 1955? That is, they were awarded or disbursed the sum of \$30,000. Would you please check that order for us, if you will - - Entry No. 388.

A And what was your question, sir?

Q What were those fees disbursed for? Do you recall that from your prior examination of the file?

A I believe that this was principally for the services rendered in the sale of the 99-year lease, before it was already in existence, a sale for more than the appraised value, and included in that was the settlement of a possible law suit or law suits, because it appeared that Mr. Dowling had made two leases on one piece of property. It was also for the services rendered in negotiating the 99-year lease of the other parcel on or in the vicinity of Lincoln Road.

Q Now, the other day Mr. Heller, in testifying about the question of these fees, I believe testified that these fees were from December 31, 1954, until March 9. Is it recited in the order whether or not that is so?

A Yes sir, it does.

Q Is that January 1, 1955, to the date of the order, which is March 9, 1955?

A I believe so.

Q I believe, sir, he also testified that according to the minimum fee schedule of Dade County, that a reasonable attorney's fee - - the fact that they did not have an attorney or that there was no attorney or attorney's fee except through the curators - - I believe he testified that a reasonable attorney's fee under those circumstances would be in the neighborhood of \$5,000. Is he incorrect in this estimate?

A Well, I didn't try to break this award down into attorney's fees and curators' fees. In fact, I think that an attorney fee might have been larger than that.

Q As much as six times larger than that, do you think?

A Well, no. This was not only an attorney's fee. It was a fee to the curators for their services and, as curators are in an administrative capacity, and it was also for their services rendered in negotiating these leases and for their services as attorneys. I don't think there is any attempt to break it down into individual services.

Q I believe, sir, you testified that you were not aware of how much had been turned over to the curators by the receiver?

A No sir, I don't recall.

Q But I believe you did testify that the receiver, his attorney and his accountant received \$10,000 for their services. Is that correct?

A That is what the order shows.

Q If I told you, sir, that they, during their administration, have turned over to the curators something over \$11,000 and less than \$12,000, would you say that \$10,000 for those services was reasonable, under the circumstances?

A Well, I had not examined this file with particular reference to what the receiver did or what his accountant did or to what his attorney did.

MR. MUSSELMAN: All right. I will not question you further. That is all the questions we have at this time.

#### REDIRECT EXAMINATION

BY MR. SUMMERS:

Q Mr. Clark, referring briefly to the last question asked by Mr. Manager Musselman, isn't it a fact, sir, that the receiver did more than the mere administrative acts in turning over \$10,000 to the curators?

A The file indicates that he did.

Q Is it or is it not the practice in Dade County for curators to, usually and customarily, have an attorney of their own?

A I think generally they do.

Q Did the curators have an attorney in this case?

A No sir.

Q Did I understand your testimony to be that, from your examination of the files in this case, you determined that the 99-year lease was sold for an amount in excess of the appraised value of the property?

A Yes sir, that is, the appraised value of the lease.

Q Mr. Clark, would the fact that Mr. Heller received a fee of \$3,000 for his services as guardian ad litem, instead of \$2,500, as you recalled from memory that he received - - would that fact in any way affect your opinion as to the reasonableness of the fees allowed in this case?

A Not as to the reasonableness of the curators' fees.

Q Mr. Clark, as a rule do the attorneys in the Eleventh Judicial Circuit charge only such fees as are stated in the minimum schedule of fees?

A No. That is a minimum schedule and, as I stated, it is a starting point and is not used in matters of great complexity.

Q Was it at anytime intended that that schedule be used as a basis for charging fees in cases? In other words, are lawyers required to use that as the amount of their fees?

A No sir, a lawyer is not restricted to the minimum fee schedule. In fact, the schedule so states.

Q One last question, sir: from your testimony, you and Judge Holt were actually competitors from the time you both entered the practice in 1925 until his appointment to the Bench?

A In a way, yes, as we are competitors of every lawyer except the ones that we are associated with.

MR. SUMMERS: That is all.

#### RECROSS EXAMINATION

BY MR. MUSSELMAN:

Q Mr. Clark, you were never a law partner of Judge Holt? Is that correct?

A No sir, I was not.

Q Or associated in the same office?

A I was never in the same office.

MR. MUSSELMAN: That is all.

CHIEF JUSTICE TERRELL: Mr. Clark, Senator Davis, a member of the Court, sends up this question:

"Is it the general practice in Dade County to appoint two curators for one incompetent?"

THE WITNESS: No, sir, I don't think it is the general practice. In fact, I don't know of another case where there were two curators, but it is a common practice to appoint co-administrators, co-executors, and it is a common practice to appoint a curator and permit him to hire an attorney and pay attorneys' fees; so I don't think that the appointment of two curators shows any improper conduct in this case.

CHIEF JUSTICE TERRELL: The second question - - have you concluded, Mr. Clark? Have you concluded your answer to that?

THE WITNESS: Yes sir.

CHIEF JUSTICE TERRELL: "Why, in your opinion, was it necessary to have two curators in this case?"

THE WITNESS: Well, I doubt that I can answer that question. That was in Judge Holt's mind, and I don't think the record reveals it, except as I have indicated in my answer to the prior question.

CHIEF JUSTICE TERRELL: The third question is by Senator Connor, a member of the Court:

"Won't it be possible in the Dowling case for the curators to be awarded additional fees that are now due, and no fee has yet been paid?"

THE WITNESS: Well, as far as Judge Prunty is concerned, he has been discharged. I don't think any additional fee could be allowed to him. I didn't go beyond the time of Judge Prunty's discharge, but I believe Mr. Heller is still curator and there is another co-curator. It would be possible to allow them additional fees, but in making the allowance I think the Court will take into consideration the fees that have already been allowed and paid.

CHIEF JUSTICE TERRELL: The next question:

"Who was there left to contest fees if both Mr. and Mrs. Dowling have been held incompetent?"

THE WITNESS: Mr. Dowling had attorneys who had represented him in the case. There was the conservator in Massachusetts; there were the relatives of Mr. Dowling. I believe the record shows that there were two cousins, or some distant relatives.

CHIEF JUSTICE TERRELL: The next question:

"If both curators are attorneys, could not the Dowling case have been administered by one curator, he being a lawyer?"

THE WITNESS: It would be possible, yes.

CHIEF JUSTICE TERRELL: The next question, by Senator Johnson:

"Are you familiar with a comparable case and the fees allowed therein and, if so, are these fees in line with the fees allowed by other judges in Dade County?"

Let me read the question over.

"Are you familiar with a comparable case and the fees allowed therein and, if so, are these fees in line with the fees allowed by other judges in Dade County?"

THE WITNESS: Well, I don't think any two judges will allow exactly the same fees under the same circumstances. Each one has his own ideas about what fees should be allowed, and it is a matter of discretion. I have known of other fees being allowed in other matters that I considered higher than these. Other people didn't.

CHIEF JUSTICE TERRELL: The next question:

"Is it the practice when curators are appointed for one

spouse for the curators to file an application to hold another spouse incompetent?"

THE WITNESS: I have never known of another case where that happened, but, as I understand the record in this case, the curators in the Jewell Dowling case were faced with an emergency, where a man had obtained a power of attorney from Mrs. Dowling and had ordered the sale of her securities, some of her securities, in Massachusetts, and the transmission of the proceeds of that sale to him. By acting quickly and promptly in this instance, they avoided the dissipation of Mrs. Dowling's estate to that extent.

CHIEF JUSTICE TERRELL: That's all the questions I have.

MR. SUMMERS: I have one other question, please.

#### REDIRECT EXAMINATION

BY MR. SUMMERS:

Q (Handing book to witness) Mr. Clark, you have in your hand the official Florida Statutes. Will you read the last section there on curatorships?

A This is section 747.19 of the Florida Statutes.

"APPEALS.—Any orders or decrees of the circuit court relating to a curatorship may be reviewed as are any other orders and decrees in equity, and such an appeal may be taken by any person as next friend of the ward after obtaining leave of the Chancellor or by the curator or by the petitioner."

Q From your reading of that statute do you interpret that to mean that any person in Dade County could intervene as next friend of the person under incompetency?

A That is what it says. I don't think it is limited to Dade County.

Q Mr. Clark, is it your opinion that that statute means that not only a living person but a corporate person could bring an appeal in that case?

A Well, I have never thought of that angle of it but, offhand, I would say that a corporation would be a person, under that statute.

Q The case of the curatorship of Jewell Alvin Dowling is still pending, is it, sir?

A I believe that was terminated at his death.

Q What about the lady?

A I think that is still pending.

Q Could an order entered in that case be appealed at any time, sir?

A I think so.

Q Sir, is it your opinion that, say, a corporation known commonly as The Miami Herald could appeal in that case if they objected to orders entered in it?

A Well, it seems that the statute is that broad. As I say, I had never thought of that angle of this appeal statute before, and it is purely a horseback opinion.

Q Mr. Clark, from your experience as an attorney, would you say that those provisions as to appeal in a curatorship are rather peculiar, as compared to the provisions in other appeals?

A It is unusual, yes sir.

Q Do you know of any other provision in the statute that provides that any person can appeal?

A Offhand, I don't recall any.

Q Any appeal taken under the provisions of that statute would be directed to what court?

A To the Supreme Court of Florida, or possibly now the Circuit Court of Appeal.

Q One final question, Mr. Clark: do you read in that section of the statute any provision requiring or authorizing an appeal to the Senate of the State of Florida?

A No sir.

MR. SUMMERS: That is all.

## RE CROSS EXAMINATION

BY MR. MUSSELMAN:

Q Mr. Clark, bearing on this question of appeal, do you read into that statute that if a person or corporation who is not a real party in interest to the suit could appeal it?

A Yes sir, I think that is what it says.

Q Now, as far as relatives or someone else in Florida to appeal any decision of the Court, do you remember whether the petition or any of the pleadings or any evidence in the court files themselves developed whether or not there were any relatives in Florida?

A No. I think the two relatives shown by the petition were in New England.

Q And what was the age of the two relatives shown in the petition?

A They were quite elderly. I am not sure about their ages.

Q Mr. Clark, in order to appeal a decision of the actions of the curators, if Mrs. Dowling's estate wished to appeal, who would actually enter the appeal for her, as circumstances presently exist?

A Well, I believe that if Mrs. Dowling went before the Court and said that she wanted to appeal, the Court would appoint a guardian ad litem to make the appeal for her.

Q Mrs. Dowling has been declared incompetent, has she not?

A Yes sir.

Q So a curator stands in her place as far as the legal sufficiency of her status is concerned. Isn't that correct?

A They are now handling her affairs, yes.

Q Well, to clear it up, Mr. Clark, in order to take an appeal of a decision rendered in his estate, the same people who administered his estate would have to appeal their own actions, would they not?

A Well, if the curators took an appeal on the behalf of Mrs. Dowling - - but I think if it was brought to the attention of the Court that she, individually, and in spite of her incompetency, wanted to take an appeal, that the Court would appoint a guardian ad litem to take the appeal.

Q But she, of her own initiative and instance, would have to go to the Court and ask the Court to do that, would she not?

A To follow that procedure, yes sir.

Q Mr. Clark, is there any evidence in the file whatsoever, in any shape or form, that any testimony was taken at any time relative to the reasonableness or unreasonableness of these fees, before the Court awarded them?

A I don't recall any such testimony in the record.

Q The fees were awarded based upon petitions filed by the curators themselves. Isn't that correct?

A Yes sir.

Q Do you know of any other estate that you are familiar with whatsoever ever having been administered in Miami or Dade County, in the probate court or under curatorship in the circuit court, where the size of the estate was \$400,000, as you have testified to, where a total sum of \$92,000, including other professional fees as were rendered in this one, were ever awarded?

A No, I don't believe I recall any such case.

Q Was there ever notice of application for fees served on anyone in Massachusetts, so that they might come down and contest it?

A I don't recall that there was.

MR. MUSSELMAN: I believe that is all.

## REDIRECT EXAMINATION

BY MR. SUMMERS:

Q I have another question. Mr. Clark, do you recall any

other case in Dade County where both husband and wife were incompetent at the same time?

A I don't recall any such situation.

Q I understood you to testify in answer to a question by Mr. Manager Musselman that the curators stood in the place of the incompetent?

A As to the management of the property.

Q For the purposes of appeal?

A Well, I believe I testified that I thought that if Mrs. Dowling brought it to the attention of the Court that she wanted to appeal, and the Court felt that an appeal should be taken, he would appoint a guardian ad litem to take the appeal.

Q Do you know whether there was a guardian ad litem in this case, for Mrs. Dowling?

A I believe that there was.

Q Do you recall, sir, whether or not the county judge in Dade County appointed a guardian of the person for Mrs. Dowling?

A It is my recollection that the Circuit Court appointed a guardian of the person, in the exercise of his equity jurisdiction.

MR. SUMMERS: That is all.

## RE CROSS EXAMINATION

BY MR. MUSSELMAN:

Q Relative to this appeal from the County Judge's Court, it is a fact at this point, isn't it, that the curators are processing an appeal which is now pending in Judge Holt's division - - the contested will. Is that not correct?

A I have not examined the appeal files at all.

MR. MUSSELMAN: All right. Thank you.

## REDIRECT EXAMINATION

BY MR. SUMMERS:

Q One last question. Mr. Clark, does Judge Holt now have a division?

A I don't think he does.

MR. SUMMERS: That is all.

CHIEF JUSTICE TERRELL: Mr. Clark, since I interrogated you a few minutes ago this question has been sent up:

"In the event the curators of the Ina Dowling estate, in behalf of Ina Dowling, choose to contest the fees awarded the curators of the Jewell Dowling estate, would it not be true that in this case Mr. Heller and Judge Prunty would be in the position of contesting their own fees? If this is so, were they not in a position of dual trust?"

THE WITNESS: I think that if they did contest the fees, yes, they would be contesting their own fees. That is true. I don't know exactly what is meant by a "dual trust." I think that they were in a trust position in both estates. I think that any curator is in a fiduciary position, and if they were curators in two estates, then they were fiduciaries in both estates.

CHIEF JUSTICE TERRELL: That is all.

MR. SUMMERS: That is all.

(Witness excused from stand).

Thereupon,

RALPH COOPER,

a witness called and duly sworn in behalf of the Respondent, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. SUMMERS:

Q Will you please state your name, sir?

A Ralph Cooper.

Q Where do you reside, Mr. Cooper?

A I live in Coral Gables, Florida.

Q What is your business or profession?

A I am an attorney.

Q How long have you been a practicing attorney, Mr. Cooper?

A Almost 30 years. I started practicing in - - - I came to Miami in June of 1927 and I was admitted to the Bar in November, 1927.

Q Where did you receive your legal training, sir?

A At Indiana University.

Q And since 1927 you have been actively engaged in the practice of law in the Eleventh Judicial Circuit?

A That is correct, except from 1942 until the latter part of 1945, when I was in the Naval Reserve, on active duty.

Q Except for the time that you were in the Navy you have been in active practice in Dade County?

A That is correct.

Q Will you please tell the Senate, very briefly, the general nature or character of your practice in Dade County?

A Well, I would assume that I would have to designate it as general practice. I do not do any criminal practice - - never have done any criminal practice except when I was first admitted to the Bar. The firm that I am associated with does all general practice, including chancery and civil litigation, real estate work, probate work and office practice - - a general run-of-the-mill general practice.

Q Mr. Cooper, have you held any positions in the Dade County Bar Association?

A I just finished a three-year term as a director of that association. I believe I served one previous term. I believe that I was a minor officer at one time, but that is of no consequence. I have served on various committees, and I just concluded a year as chairman, I believe of the Unauthorized Practice Committee this last July.

Q Have you ever been on the Grievance Committee in that circuit?

A Yes, I - - you mean the county Grievance Committee or the Florida Bar?

Q The Florida Bar Grievance Committee.

A I served on the county Grievance Committee on two or more occasions, and I just completed a year as a member of the Grievance Committee of the Eleventh Judicial Circuit of the Florida Bar.

Q Sir, are you familiar with the practice and procedure in equity cases, with particular reference to curatorships?

A I personally have never handled a curatorship. I think we have had one or more in the office during my time, but I had nothing to do with them, except, I suppose, in an advisory capacity; but, from observation, I know something about curatorships, yes sir.

Q Estate matters, and so forth?

A Well, are you talking about probate matters, now?

Q Yes.

A Yes, I would say that I think I have had the whole gamut of probate practice.

Q And are you familiar with the fees usually and customarily charged in that circuit?

A Well, I think I, generally, am, as nearly as anyone can be.

Q Have you examined the files in the case of the curatorships of Jewell Alvin Dowling?

A Yes sir. I have examined those files. I examined them last October. I examined them somewhat comprehensively. I examined it again in November or December, in connection with another matter that has nothing to do with the in-

quiry here, and I have been through them generally within the last week.

Q Did you form an opinion as to the reasonableness or unreasonableness of the fees allowed the attorney and the curators in that case, sir?

A Yes sir, I did.

Q Will you state that opinion to the Senate, and upon what it is based?

A If it is permissible for me to refer to notes - -

Q Yes sir.

A Which I prepared myself, because I am sure that you will appreciate, sir, that that is a very comprehensive proceeding and the file is voluminous.

(The witness produced papers, to which he referred during the course of his subsequent testimony.)

A I start out with this general explanation: to me, this was an unusual curatorship, in that we have involved the estate of Mr. Dowling, who had obviously been a very intelligent, very successful businessman, and who had accumulated a very respectable fortune, but who had attained the age of 78, as I recall, when he just apparently was not as mentally alert. Certainly, physically he was partly disabled by virtue of one or more cerebral accidents. Therefore, he could be of very little, if any, assistance in the unraveling of his somewhat complicated affairs.

His wife was, apparently, also near 78. Of course, as we know, during the progress of this proceeding she was found to be unable to administer her affairs and, ultimately, curators were appointed for her. She, therefore, I assume could be practically of no assistance in apprising the appointed Court representatives of matters helpful in the unraveling of the, as I say, complicated business affairs of her husband, not to mention her own.

These two people, singularly, were practically alone in the world. As I recall, the petitioner for the appointment of the curators for Mr. Dowling recited that the closest relatives were these two cousins, that were both aged and both domiciled, as I recall, in Maine.

Evidently, if this record may be taken at face value, the only people who concerned themselves with the welfare and the well being of those two elderly people were either former business associates or people who possibly were interested for purely personal reasons. It was obvious that Mr. Dowling was being imposed upon by certain alleged friends in Miami Beach and that Mrs. Dowling, in her condition, could have been easily intimidated or overreached, I am sure; so this curatorship not only amounted to a business management operation, but it amounted to an undertaking to determine the assets and holdings of these people and to familiarize the representatives with those things, with practically no assistance. It involved not only a business manager relationship, but also a personal relations supervision.

The record would indicate that both of these people owned real and personal property, located in Florida and in Massachusetts. The Florida property, of course, was not such a problem, but these well - - or ill-meaning individuals who apparently interested themselves in the Dowlings' affairs in Massachusetts certainly did nothing to facilitate or to ease the undertaking of the appointed representatives.

I think that we must assume or that we must be certain that Mr. Dowling, by virtue of his age and his possible weakening condition, had made some business commitments which could well have jeopardized his accumulations over the years. If the allegations in the petition for the appointment of a curator - - and we must remember that this was inspired by his wife and by alleged business advisors of hers in Massachusetts, where these people were domiciled - - are true, he had allowed his personal and business affairs to deteriorate to such an extent that his assets were in jeopardy, not only with conflicting leases which he had made, but by his failure to pay taxes, by his failure to pay judgments entered against him, by some doubt as to whether or not he was able to furnish adequate information for the preparation of his income tax returns, and certainly by not obtaining from his assets their maximum earning value.

We don't have entirely accurate information about the value

of the assets of these two people, but I think we may assume that the petition for appointment in Mr. Dowling's instance recited, as I recall it, that his estate aggregated some one million two hundred thousand dollars, approximately.

Mrs. Dowling, you know, had a property in Miami Beach, her residence over there, which was appraised, I think, at some \$57,000, and she had securities in Massachusetts, as I recall it, in the neighborhood of two hundred to two hundred and fifty thousand dollars.

So the subject matter, the material subject matter, of this curatorship was substantial and it was involved. I take into consideration, so far as the business interests of this transaction are concerned, that these curators proceeded promptly and aggressively to discharge the duties which were incumbent upon them because of the inability of these people to do for themselves. They sold two boats, which had been a financial drain on Mr. Dowling, I am sure, for what would be considered to be an adequate price, based upon appraisal values. They sold the guest house, for which the Dowlings had utterly no use, adjacent to their residence on Normandy Island, Miami Beach. They negotiated the sale of a 99-year lease for an amount substantially in excess of the appraised value fixed by Adrian McCune and Mr. Bennett, both of whom are recognized, qualified appraisers in Miami. They leased a parcel of property of which Mr. Dowling owned the fee for a period of 99 years, at a particularly advantageous arrangement, I thought, in that this lease contained no subordination clause, it contained no option to purchase, it provided for a prepayment of rental of three years, but not the first year - - the fifth, tenth and fifteenth years, we will say, which provided this estate \$52,500, and which was needed, because Mr. Dowling's estate obviously - - well, he was land-poor and cash was something which he had to have for living expenses, and had this not been obtained it is conceivable that it would have been necessary to borrow money and to encumber some of their assets.

Above all, this 99-year lease was negotiated for an amount in excess of the appraised valuation fixed by Messrs. McCune and Bennett.

Now, not the least important service, in my mind, that was rendered to these people was the fact that these curators provided for their personal comfort. If we may believe the reports appearing in the file, they were living in circumstances altogether unfortunate, in that they had practically no conveniences and they were barely subsisting. Here were two people, with no close relatives, no one who had any claim upon them for support, who, by virtue of their accumulations of a worldly estate were entitled to a high standard of living, and who were barely, as I say, subsisting. The curators spent money lavishly. I can't say that they were right or wrong about that, entirely. They provided them an expensive automobile and they spent a great deal of money in renovating and furnishing and repairing their residence; but I don't know of any reason why they shouldn't have had the best, and I think these curators must be given credit for having it provided for them.

It was not without some difficulty that they were able to take care of their personal affairs, because I think it seems perfectly apparent that numerous persons interfered in the administration of their affairs by thinking to inject themselves into the picture. We know that Mrs. Dowling was imposed upon to execute a power of attorney which could have resulted in waste, possibly of substantially most of her estate. We know that a person came from Massachusetts down to Miami and caused her to execute some documents, in flagrant disregard of the orders of the Court.

I think we may reasonably assume that not only was time devoted during working hours in the discharge of this duty, but that these curators must have given a great deal of outside time, because this was, for practical purposes, a 24 hour a day job, in that, as I understand it, at all hours and at all times they might be called upon to make a trip over there. They had some difficulty with domestic help, so it is hard to appraise this in the sense that we ordinarily fix fees in legal circles, on a time basis, because of these very many complicated factors.

So, everything considered, I would say that the fees allowed in this estate - - and I take it that when you are asking me you are talking about curatorship fees as well as other fees, are you?

Q Yes, sir.

A That the fees in this estate, allowed in this estate, are not unreasonable. I think they are liberal. I don't think anyone will dispute that, but my own personal opinion, based upon my experience and observation, is that this case has received an undue amount of notoriety and publicity, not because of the allowances which were made but possibly because of the personalities involved.

Q Then your testimony is that the fees allowed in this case were reasonable. Is that correct?

A That is my testimony, yes sir. I would like to add this: I have addressed myself primarily to the curators, but I know that some \$23,000 in fees were allowed to those persons who participated in this proceeding before the appointment of the curators, consisting of receiver's fees, receiver's attorney's fees, guardian ad litem's fee, accounting fee, and what not.

Now, this law suit did not start of its own volition. It had to be started. It started with the widow, and she was represented by most able counsel, and her husband was represented by able counsel, and they, in effect, I would say, stipulated for the appointment of a receiver because they recognized the urgent necessity for immediate attention to the affairs of Mr. Dowling; and had either of those firms of attorneys considered these fees allowed in the receivership stage of this proceeding to be excessive, of course it was their privilege to appeal. Furthermore, had either of those firms of attorneys or had any person connected with the Dowlings by blood relationship or otherwise, seen fit, had they considered that there had been excessive allowances made, it was their privilege to enter an appeal from those orders. And that was not done. As I understand it, not a single order entered in this curatorship was appealed. I think that is very significant.

Q Your testimony is that all the fees allowed, whether to attorneys or to curators, were within the permissible limits of judicial discretion. Is that right?

A Well, I take this premise - - we have to take this premise in the law business: we can't measure, as a real estate broker can, fortunately for him, by five per cent or ten per cent, depending on whether it is improved or unimproved, or seven and a half per cent if he has an exclusive. In the law business that is one of the most difficult problems a lawyer suffers from - - the fixing of fees; but in instances such as this it has to rest within the sound discretion of the court.

Now, we in our county have judges, of course, some of whom have served many years, some of whom are comparatively new on the bench, and I would say that, predicated upon the allowance of fees made in our circuit there, both in the circuit court and in the county judge's court, which are the two courts in which the judges fix fees in their discretion, that these fees, I say - - well, I think that they are liberal but I do not think that they are sufficient in amount to shock anyone, and I repeat what I said in the beginning, and that is that I think the personalities in this case have focused attention on the amount of these fees, rather than the actual amount of property involved and services rendered, and I repeat again that I think it is significant that no one, regardless of how many people may have been interesting themselves in the welfare of the Dowlings since the spotlight was placed on this case, no one during the progress of these proceedings ever saw fit to appeal from a single order.

Q Mr. Cooper, will you state to the Senate whether or not one of the junior associates in your firm is Mr. Henry Kurtz?

A That is correct, yes sir.

Q Do you know the relationship between Mr. Kurtz and Judge Holt?

A Yes sir. He married Christine Holt who is Judge Holt's daughter.

Q Would the fact that Mr. Kurtz is a member of your firm and that he is also Judge Holt's son-in-law influence your testimony in any way or cause you to be biased in any way?

A No sir. Mr. Kurtz is my partner. When I first came to Miami I was associated with his father, who came down there in 1912 and was a pioneer in the Miami area, and our firm now is composed of Mr. Kurtz and his two sons; but the testimony which I have given here I would have given, regardless of the persons or personalities involved. It is my honest opinion,



gentlemen. I have not twisted this or distorted my testimony one bit by reason of the fact that my partner happens to be Judge Holt's son-in-law.

MR. SUMMERS: You may inquire.

#### CROSS EXAMINATION

BY MR. MUSSELMAN:

Q You say, Mr. Cooper, that no one appealed any of the decisions or orders entered in this case?

A That is my understanding, based upon my examination of the record.

Q How long, sir, did you examine these files, and did you have the original files to look at or did you have photostatic copies, or what?

A When I made my examination of these files last fall, which was in a matter having nothing to do with this inquiry, my recollection is that I had the original files. However, when I examined these files this past week I had photostatic copies of the file which was certified by the Clerk, I believe, the Clerk of the Circuit Court. I think it was obviously a true copy.

Q Did the file that you examined reflect any contempt proceedings against a person by the name of Anna Bickford?

A Emma Bickford?

Q Emma Bickford.

A Yes.

Q It is true, sir, that she came down here from Massachusetts in an attempt to get a paper signed by Mrs. Dowling. Is that not correct - - or papers?

A The petition and the testimony, I believe, that supported that petition, would indicate that she came here for that purpose, yes sir.

Q And Judge Prunty, in the absence of Mr. Heller, petitioned for a rule to show why she should not be held in contempt. Isn't that correct?

A That is my recollection.

Q Do you recall that the order of the Court was, as to whether or not she was in contempt of court?

A Yes, I do recall that she was found to be in contempt of court. I am not sure whether the order was entered, but either an order was entered or else the judge announced his order upon the conclusion of the testimony, which was embodied in the transcript, to the effect, I believe, that she was in contempt of court and that she should be sentenced to jail, as I recall.

Q Does it also reflect that her counsel at that hearing attempted to have the Court let him have custody of the respondent for a short while, to get her personal belongings?

A My recollection about that is not clear. As I best recall, the order adjudging her to be in contempt was set aside and held for naught by an order entered some two or three weeks after she was adjudicated to be in contempt. I recall that Luther Mershon, who is a highly respected member of the Miami Bar, was her personal counsel, and I have a vague recollection - - and this may not be in the file - - may be that someone told me this - - that she was released from custody after, maybe, a momentary detention.

Q But you have examined the transcript whereby this hearing was reported, have you not?

A Well, if you ask me to quote from it verbatim, if that's what you are asking me I am going to have to disappoint you; but I did examine the file, yes sir.

Q Do you believe that you would recall the transcript if you had a chance to look at it again this morning?

A Having to do with Emma Bickford?

Q That is correct.

A I believe I would.

(Mr. Musselman handed a bound document to the witness for his examination.)

SENATOR DAVIS: Mr. Chief Justice, while the witness is familiarizing himself with this transcript, I move that the Senate stand in recess.

CHIEF JUSTICE TERRELL: You have heard the motion. Is there any objection?

Whereupon, beginning at 10:50 o'clock a. m., the Senate stood in recess until 11:00 o'clock a. m.

CHIEF JUSTICE TERRELL: Order in Court.

A quorum is present.

Proceed, Mr. Musselman.

BY MR. MUSSELMAN:

Q Mr. Cooper, have you had a chance to familiarize yourself with the document I handed you?

A Yes sir, I have examined this copy.

Q Can you tell me accurately whether that is a true and correct copy of the one that you saw before?

A I could only hazard a guess. I assume that it is. I suppose that I should explain now that when I examined this original court file last October - - and, as I say, it had nothing to do with the Holt matter, because, actually, I didn't know that I was going to be called in this hearing until I read my name in the paper a week ago last Monday and received a subpoena that afternoon; so that I made no special preparation to testify at this hearing except such as I made in the last ten days. But last October Judge Prunty, in a matter having nothing to do with this investigation, inquired whether I would examine the file and give him an opinion, and at that time he made available to me the original files, if I recall correctly. Now, they may have been photostats. I won't be positive.

Q Did you - -

A Let me finish, sir. I believe that I must have also received a copy of this transcript. I thought it was in the original court file, but I have made my own outline here, such as it is, and I see that the only notes that I have about a progress docket in the court file having to do with Bickford is the notation on January 10th the petition in regard to Bickford was filed and that on February 9 an order was entered vacating the contempt order, so my answer to you, sir, is that if this is a true copy I assume that I likewise had a true copy.

Q If you can't accurately tell us and if you have to assume that it is I won't disturb you any further. Will you hand it back.

Mr. Cooper, I believe you testified that you are not too familiar with curatorship matters, in that you have not represented anyone in a curatorship or filed a petition for a curatorship, but that you might be through other activities of your law firm?

A Well, I would say this: curatorships are not common. I don't want you to think that I am at all lacking in experience in my 30 years of practice, because I think I have been through most forms of litigation. Curatorships are uncommon and I have never personally handled a curatorship, nor have I ever acted as a curator. However, our firm has represented curators. It is not clear in my mind now whether it was a county judge's curatorship or a circuit court curatorship.

Q Has your firm, to your knowledge, ever filed a petition to have someone's competency determined and a curator appointed?

A My recollection is that we did and that we represented the curator, but, as I say, my recollection is hazy about that and I did not reexamine the file, if it hadn't already been destroyed, before I came up here.

Q Do you have even a hazy recollection as to what your fee was for your services in filing this petition?

A Not the remotest idea, sir.

Q I refer you to the petition of January 4th or 5th - - let me locate it - - Entry No. 221, petition for appointment of a



curator for and on behalf of Ina I. Dowling. Would you please examine the court files, which are to your left, and look at that petition?

A Which one?

Q Entry 221, which is noted on the lower right hand corner of each page.

A Yes sir.

Q How lengthy is that petition, sir?

A Three pages.

Q Now, when was the order entered on that? Do you recall from your knowledge of the file?

A Do you want me to refer to my notes?

Q Well, perhaps I can tell you. Would you look at the order of January 7th? What was the date of that first petition? I will ask that before we leave it.

A The petition was filed January 5.

Q All right, sir. Look at the order entered on January 7 as a result of that petition, Entry No. 239.

A Yes sir.

Q Am I correct in saying that the date is January 27 and that it is an order appointing Messrs. Heller and Prunty as curators of the Ina I. Dowling estate?

A January 7, yes sir.

Q All right, sir. I will ask you now to refer to Entry No. 251, which is dated January 27, 1955.

MR. HUNT: What page, sir?

MR. MUSSELMAN: 251.

A It seems to be missing from this file. It skips from 249 to 253.

Q I think it was referred to the other day when another witness was testifying. Maybe it is out of order, sir. Would you see if you can find it?

(The witness arose and went to the table at which Mr. Musselman was seated, and the witness and Mr. Musselman searched through the file together.)

Q I will ask you this, sir: refer to your personal notes that you made, reflecting these various entries.

A Well, this is the progress docket, you understand.

Q Just from your memory and from your notes, let me inquire about this order entered January 27?

A That relates to the sale of the lessee's interest under a lease.

Q No, the order awarding fees both to the curators and the guardian ad litem. Perhaps I could speed it up by saying this, Mr. Cooper, and you correct me if I am incorrect: isn't it true that the petition for appointment of curator for Ina I. Dowling was filed January 4, 1955, as you just testified, or January 5th; the order was entered on January 7, 1955, and they were awarded a fee of \$7,500 each, or \$15,000, on January 27, 1955, some 20 days later?

A Well, I will assume that what you say is true.

Q You don't know of your own knowledge?

A Give me a second. Yes, I have a notation here to the effect that on January 27, 1955, the Court entered either one or two orders, one allowing \$7,500 to each of the curators in the Ina I. Dowling curatorship and one allowing \$5,000 to each of the curators for their services in the Jewell Dowling curatorship.

Q That is correct. That was 20 days after the original filing of the petition. Is that correct?

A Yes, 20 days elapsed between the date of the petition and the date of the order.

Q And your testimony, sir, is that that would be a reason-

able fee, in the sum of \$30,000 for filing a petition for curatorship?

A Well, sir, I don't think you have stated it accurately.

Q Well, state it accurately for me.

A According to my notes, the only compensation ever allowed to either one of these curators for services performed in the Ina I. Dowling curatorship was \$7,500.

Q That is, so far.

A Now, as I understand, that curatorship continued from the date of their appointment, which was January 7, 1955, until Judge Prunty went on the Bench, which I recall to be in January of 1956, and I believe the curatorship is still in effect. I don't know what fees have been allowed since Judge Prunty retired from it, but I would respectfully call to your attention the fact that that \$7,500 covers the entire time that they acted for her. The timing, I don't think, has any particular significance. If you are a lawyer you know, sir, that oftentimes we get a retainer before we even file a lawsuit, and it may be the entire fee. The timing of the thing - - I don't think that has any significance. Certainly we are not going to quibble here about whether it was before or after. I assume that what we are talking about is the reasonableness of these fees. That is what I have testified about.

Q Is it your testimony, then, that these fees allowed on January 27th were, in effect, the retainer for the curators?

A No sir, I didn't say that, sir. I said that I didn't think that a \$7,500 allowance for the services which these curators performed for Ina I. Dowling was unreasonable - - nothing else.

Q Were they authorized to act as her curators before January 7, 1955?

A No sir.

Q So they could not have performed services as curators prior to that date, could they, Mr. Cooper?

A No, not for her.

Q I believe, sir, that you said that the petition set forth that they had property or that Mr. Dowling had property valued at something over a million dollars, did you not?

A That was the initial petition filed in this proceeding.

Q Would you refer to that petition, please?

A Yes sir.

Q First, where does it state that Mr. Dowling's residence is? Do you see that in the first paragraph of the petition?

A Yes sir.

Q What does it say?

A Well, it says that the petitioner, who is Mrs. Dowling, is a resident of the State of Massachusetts.

Q Does it state where Mr. Dowling's residence is?

A No, but she is his wife and we will assume that they have a common residence.

Q You have testified that the assets were valued at over a million dollars. Does that reflect also the assets that were in the State of Florida?

A No sir.

Q What does it reflect as to the location or situs of those assets?

A It reflects that her husband owns, in her opinion, property in Dade County of the approximate value of \$440,000 and property in Massachusetts of \$702,000, which, as I stated in my direct examination, was an estimated approximate value of \$1,200,000. Now, we know that, as to the Dade County property, those figures were low.

Q They were low?

A That is my recollection.

Q Does it specify, please, sir, what each asset in Florida is valued at, in the petition?

A Yes sir.

Q Would you please indicate what assets there were and what they were valued at, in the petition?

A It shows the Dade County property to be Lot 12, Block 13 - -

Q What was that valued at?

A It was valued at \$75,000.

Q Before you leave that, sir, let's talk about that asset. Is that the home or the guest house that you say was sold?

A My recollection is that the guest house belonged to him. I don't know whether that legally fits the guest house or the residence. My recollection is that the residence was her property.

Q Do you know what the guest house was sold for?

A Yes sir, I think I do. According to my notes, it was sold in October, 1955, for \$29,500.

Q \$29,500?

A Yes sir.

Q All right, what is the next asset shown?

A The next asset is the lessee's interest in the 99-year lease, Lots 5 and 6 of Block 50 of Second Commercial Subdivision.

Q What is the value shown of that?

A \$350,000.

Q \$350,000?

A Yes sir.

Q What was that sold for - - the lessee's interest?

A That leasehold was sold for - -

Q Is the figure \$127,500 familiar to you?

A I believe that is correct.

Q What is the value of the boats, as shown in the petition?

A \$15,500.

Q What were the boats sold for? Do you recall?

A I think it was \$7,250.

MR. HUNT: Are you finished with that subject?

MR. MUSSELMAN: Yes sir - - there is one other asset.

THE WITNESS: Well, that, of course, altogether omits the fee interest that he owned.

MR. MUSSELMAN:

Q Give us the value of that.

A I don't have any idea. I don't believe we had any information of the gross value. It was leased for a term of 99 years at a rental of - -

Q Advance rental of \$52,500, and \$17,500 a year after the first year?

A I think it was \$14,000 a year for the first two years and \$17,500 a year thereafter. I don't think we had any appraisal of the value of that property, but, obviously, property that produces that much net rental has a pretty substantial value.

Q What was the value of the automobile that was shown in the petition?

A I don't see any reference to an automobile.

Q All right, sir, fine. I believe, sir, that you have testified - - and I am going to cut it short, because we are running short on time - - I believe you testified that they were lavish in their spending on the Dowling home?

A Yes. I thought they were bordering on extravagance but, as I explained, I thought that two aged people, with a combined gross estate of something over a million dollars, or

a million and a half, were certainly entitled to the best that money could buy in their declining years.

Q Do you recall from examining the file whether any permission or instructions of the Court were obtained prior to the spending of that money?

A I don't recall whether the authority was obtained before or whether it was confirmation afterward.

Q Do you recall what was turned over by the receiver to the curators?

A Do you mean in cash?

Q In cash, yes sir.

A According to my notes, \$11,050.

Q Have you, sir, run any type of accounting as to the actual cash received by the curators during their curatorship?

A No. I know that is accounted for in the file, but I didn't make any aggregate figure.

Q Have you examined the probate file wherein Messrs. Heller and Prunty were appointed curators in probate court?

A No.

Q Do you know of your own knowledge how much money was actually turned over to the probate court?

A No sir.

MR. MUSSELMAN: I believe that is all the questions we have at this time, Your Honor.

#### REDIRECT EXAMINATION

BY MR. SUMMERS:

Q Mr. Cooper, in regard to the services performed by the curators, do you know from your examination of the file whether or not they obtained and kept at the Dowling home a housekeeper?

A Well, not only a housekeeper, but I think I testified that that, I think, was one of their problems - - domestic help - - because I think we all know from common experience that it is not the easiest matter in the world to find someone to take care of persons who are either physically or mentally unable to take care of themselves. Yes, I do know that the file indicates - - I think, as a matter of fact, there was a case of misplaced confidence in one Hellman or Heilman or whatever his name was, and I recall that toward the latter part of the guardianship - - I mean the curatorship - - they had a guardian of the person appointed, which I think was commendable, because, as I say, I can't dismiss the fact that here were two people who had all the worldly goods that they could ask for, and yet who were denied things at a time in their lives when they were unable to gauge their own needs or to take care of their own needs; so I think what the curators did—I know they spent money lavishly on the house and the automobile and possibly for domestic help, but for what better purpose could it have gone? Aren't we concerned here primarily with the welfare of these two people?

Q Mr. Cooper, have you examined the files to determine whether or not the curators contested a will, the will of Mr. Dowling, in the interest of Mrs. Dowling?

A My only information about that is that I recall that there is a petition in the file in which the curators sought leave of court to institute such a contest. I don't know anything further about it. I believe that that permission was granted.

Q Sir, do you know of your own knowledge that Judge Prunty was engaged in a campaign for election to the court rather recently?

A Yes. I know that he had opposition in the form of a write-in candidate in the election in the fall of—well, last fall, 1956.

Q Do you know of your own knowledge that the question of the fees allowed him as a curator was an issue in that campaign?

A I'm sorry. I didn't get that question.

Q Do you know of your own knowledge that the fees allowed to Judge Prunty as a curator in the Dowling case were issues in that campaign?

A Sir, the Dowling case has been a very favorite subject for discussion in the press in the Miami area for some months.

Q Was it a favorite subject of conversation prior to the election campaign?

A Well, I can only speak for myself. I never heard of the Dowling case until the spring of 1956, I guess, when a Dade County grand jury released a report which was promptly publicized.

Q That report was publicized prior to the election?

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I hate to interrupt this line of questioning, but I can't see the materiality of this particular line, or anything that is material with reference to the grand jury report or what was said in Dade County about this case.

CHIEF JUSTICE TERRELL: Well, the grand jury report was excluded.

MR. SUMMERS: Mr. Chief Justice, if I may explain, the sole purpose for this line of testimony is this: at the request of the Chief Justice, the Respondent has withheld raising an objection to anything that happened in a prior term. At such time as the Respondent is permitted to raise and argue that issue, it will become very material whether or not these particular things were known prior to an election. For that reason I think that the testimony is material.

CHIEF JUSTICE TERRELL: Answer the question, Mr. Witness.

MR. MUSSELMAN: Wouldn't it be more feasible to inquire of Judge Prunty rather than this witness?

CHIEF JUSTICE TERRELL: This witness can state what his knowledge is.

MR. SUMMERS: Mr. Chief Justice, if it pleases the Senate and the Court, and in view of the hour, we will wait and ask Judge Prunty those questions.

CHIEF JUSTICE TERRELL: That is satisfactory.

BY MR. SUMMERS:

Q Mr. Cooper, I will ask you to read Section 747.05 of the Florida Statutes for the Senate, please, sir.

A Do you want me to read it aloud?

Q Please read it.

A Section "747.05, Curators, appointment. — Any circuit court, in the exercise of its equity jurisdiction, may appoint a curator to take charge of, manage and conserve the property of any person permanently or temporarily residing in this state, who shall become physically incapacitated, or feeble-minded or epileptic or so mentally or physically defective by reason of age, sickness, use of drugs, the excessive use of alcohol, or for other causes that he or she is unable to take care of his or her property, and in consequence thereof, is liable to dissipate or lose the same, or to become the victim of designing persons."

Q Mr. Cooper, do you see anything in that Statute that requires a person to be a resident of Florida in order to have a curator appointed for his estate?

A No. On the contrary, the Legislature has provided that this remedy is available in the event of a person permanently or temporarily residing in the state.

Q One further question: from your examination of the Statute there, can you tell when that particular provision authorizing the circuit court to appoint curators was enacted into law by the Legislature?

A This is Section 1, Chapter 25376, Acts of 1949.

Q To your knowledge, did the circuit court have such authority prior to 1949?

A My recollection is that prior to 1949 that jurisdiction

was vested in the county judge's court, but I would not be certain about that.

MR. SUMMERS: That is all.

#### RECROSS EXAMINATION

BY MR. MUSSELMAN:

Q Mr. Cooper, it does say in the Section you just read the words "a curator," does it not?

A Yes.

Q So in order to have more than a curator they would have to read it into the Statute. Is that correct?

A Well, I don't think so. I don't want to bandy words with you, but I think the Probate Act says that you can appoint an executor or an administrator, and, as you well know, a will which contains more than one executor, if he renounces the court will appoint as many as are qualified to act; and in the case of an intestate we both know that there are instances when the court appoints two or more administrators; so I don't think you can place any particular significance on that—whatever the word is.

Q It was "a."

A Well, whether it said "a curator" or "curators"—I don't believe that has any particular significance. I think the Legislature here was concerned with one question, and that was the question of vesting jurisdiction to appoint curators in the circuit court. I think it is discretionary with the court whether he appoints one, two or a dozen.

Q One final question, please, and you can give this one a direct answer. Does that Statute say anything about a personal representative being able to file a petition for a curatorship?

A No sir.

MR. MUSSELMAN: Thank you.

#### REDIRECT EXAMINATION

BY MR. SUMMERS:

Q Mr. Cooper, what position does the curator hold in reference to his ward? What is that relationship?

A I suppose I can best define it by saying that he is the ward in a legal sense.

MR. SUMMERS: That is all.

CHIEF JUSTICE TERRELL: Mr. Cooper, Senator Connor, who is a member of this Court, sends up this question:

"If your estate had to pay the fees in the Dowling case would you consider them reasonable?"

THE WITNESS: Well, let me think how best to answer that question. Sir, I suppose my answer to that would be this: I suppose that everyone of us, when we die—some of us at least—are going to die with the normal fear that our estates are going to have to pay fees in order to be administered, that they are going to have to pay estate taxes, both to our state and to the federal government, and that there are going to be court costs and whatnot. That is something over which we have no control. Now, I thought I made it clear in my direct examination—and I won't repeat it—but it is my sincere feeling, gentlemen—and I would not have so testified if I did not believe that to be true—that, considering the responsibility which these two gentlemen took, considering the fact that they acted in a personal capacity and in a legal capacity, considering that an untold amount of time was devoted to this most troublesome situation because of the condition of those two people, and considering that they were able to pay—now, you may say that ability to pay has nothing to do with it, but, unfortunately, insofar as lawyers are concerned we sometimes have to charge one person who has worldly goods to make up for the charities which are performed for people who are less able to pay; so I can't give you a categorical answer, sir, but it is my feeling, as I have testified that, all things considered, considering the undertaking of these curators and the results accomplished, that the fees allowed in this litigation were not unreasonable.

CHIEF JUSTICE TERRELL: The second question:

"Can you, from just looking at the files, tell whether the fees in this Dowling case were reasonable?"

THE WITNESS: Well, I don't hold myself out as an expert on fees, because I think that very few of us lawyers are. That's the reason so many of us die poor.

CHIEF JUSTICE TERRELL: The third question:

"Is it not true that curators are rather common in Judge Holt's court?"

THE WITNESS: Well, I can only answer that question this way: that I never heard of the Dowling curatorship until, as I have testified, it was publicized in the local press. I have no knowledge, no individual knowledge, that Judge Holt ever appoints curators.

CHIEF JUSTICE TERRELL: That is all.

(Witness excused from stand.)

MR. HUNT: Your Honor please, the hour approaches noon. We have one more witness, Judge Prunty, who, I anticipate, will take a considerable period of time on the stand. He is due to be back here next week for other phases of this matter anyhow, so it won't cost anything, if it pleases the Senate to take Judge Prunty the first thing when the Senate convenes Monday at two o'clock, so that there will be no break in his testimony and no one will be inconvenienced by run-

ning over the hour for adjournment today; so I would suggest, if there is no objection, that we consider it in that fashion and that we be permitted to bring Judge Prunty on as the first witness at two o'clock on Monday.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: In view of the statement by the attorney for the Respondent, Judge Hunt, I move that the Senate be now adjourned.

(The motion was seconded from the floor.)

CHIEF JUSTICE TERRELL: You have heard the motion. All in favor make it known by saying "aye."

(Those in favor of the motion so voted.)

CHIEF JUSTICE TERRELL: Opposed, "no."

(There were no votes cast in opposition to the motion.)

CHIEF JUSTICE TERRELL: The "ayes" have it, and the Senate stands adjourned until Monday at 2:00 P. M.

Whereupon, the Senate, sitting as a Court of Impeachment, adjourned at 11:40 o'clock A. M., until 2:00 o'clock P. M., Monday, August 5, 1957, pursuant to the motion made by Senator Davis on Thursday, August 1, 1957.